

70 FR 28271, May 17, 2005

A-351-832  
First Administrative Review  
POR: 4/15/02 - 9/30/03  
**Public Document**  
Office 1: DEN

MEMORANDUM TO: Joseph A. Spetrini  
Acting Assistant Secretary  
for Import Administration

FROM: Barbara E. Tillman  
Acting Deputy Assistant Secretary  
for Import Administration

DATE: May 9, 2005

SUBJECT: Issues and Decision Memorandum for the Final Results of the First  
Administrative Review of Carbon and Certain Alloy Steel Wire  
Rod from Brazil

### **Summary**

We have analyzed the comments in the case and rebuttal briefs submitted by interested parties in the first administrative review of carbon and certain alloy steel wire rod (steel wire rod) from Brazil. As a result of our analysis, we have made revisions to our margin calculation. We recommend that you approve the positions we have developed in the Discussion of the Issues section of this memorandum. Below is a complete list of the issues in this review for which we have received comments from the parties:

Comment 1: Normal Value Adjustment for ICMS taxes

Comment 2: U.S. Price Adjustment for Duty Drawback

Comment 3: Adjustment for Commissions

Comment 4: Affiliated Parties

Comment 5: Special Rule for Products Further Manufactured in the United States

Comment 6: Final Scope Ruling

### **Background**

On November 8, 2004, the Department of Commerce (the Department) published the preliminary results of the antidumping duty administrative review of carbon and certain alloy steel wire rod

from Brazil.<sup>1</sup> The period of review (POR) is April 15, 2002, through September 30, 2003. The respondent in this review is Companhia Siderúrgica Belgo Mineira, Belgo Mineira Participação Indústria e Comércio S.A. and BMP Siderúrgica S.A. (collectively, “Belgo”). We verified the information submitted on the record by the respondent with on-site visits and issued our findings in the verification reports. We received case briefs and/or rebuttal briefs, respectively, from the petitioners (Gerdau Ameristeel US Inc., Georgetown Steel Company, Keystone Consolidated Industries, Inc., and North Star Steel Texas, Inc.<sup>2</sup>), Belgo, and its affiliate.<sup>3</sup> No public hearing was held for this administrative review.

## **Discussion of the Issues**

### **Comment 1: Normal Value Adjustment for ICMS taxes**

The petitioners argue that Belgo overstated the amount for the downward adjustment for “Imposto Sobre Circulacao de Marcardoria e Servicos” (ICMS) tax, or tax on the circulation of products and services, in calculating normal value and request that the Department deny Belgo’s claim for a full adjustment for the ICMS tax.

In Belgo’s Section C Questionnaire Response, the petitioners point out, Belgo stated that as the ICMS is a value added tax (VAT), it receives a credit in the amount of ICMS tax paid on the import of an input used in the production of steel wire rod that is then used to offset the ICMS tax liability upon the sale of steel wire rod in Brazil.<sup>4</sup> Therefore, the petitioners assert that the ICMS tax owed by Belgo in the home market is reduced due to ICMS credit. However, pointing to Attachment C-14 of Belgo’s Section C Questionnaire Response, the petitioners argue that Belgo reported the value of the ICMS credit for domestic sales without including the amount of credit for the ICMS tax paid on the product used in the steel wire rod process. From the above referenced attachment, the petitioners contend that Belgo’s ICMS tax claims are improperly overstated. Citing 19 C.F.R. § 351.401(b)(1), the petitioners state that “Belgo bore the burden of establishing the correct amount of the adjustment” and “{b}ecause Belgo failed to establish the correct amount of the adjustment, no downward adjustment should be made for ICMS taxes.”<sup>5</sup> However, as an alternative to allowing no downward adjustment, the petitioners suggest that the Department, using facts available, calculate the per unit ICMS credit to correct the overstated

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<sup>1</sup> See Notice of Preliminary Results of Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod From Brazil, 69 FR 64716 (November 8, 2004) (Preliminary Results).

<sup>2</sup> Since the review was initiated, Georgetown Steel Company was purchased by International Steel Group and is now known as ISG Georgetown. As of November 1, 2004, Gerdau Ameristeel completed its purchase of the assets of North Star Steel, and that facility is now part of Gerdau Ameristeel.

<sup>3</sup> Bekaert Corporation (Bekaert U.S.) and N.V. Bekaert S.A. (N.V. Bekaert) (collectively, “Bekaert”).

<sup>4</sup> See petitioners’ case brief at 2.

<sup>5</sup> Id. at 3.

ICMS and increase normal value by that amount.

The respondent counters that Section 773(a)(6)(B)(iii) of the Tariff Act of 1930, as amended, (the Act) provides for a “deduction from normal value of ‘the amount of any taxes imposed directly upon the foreign like product or components thereof which have been rebated, or which have not been collected, on the subject merchandise...’”<sup>6</sup> According to respondent, the ICMS tax was correctly described, identified on sales invoices and reported in the necessary fields.<sup>7</sup> Therefore, the Department deducted the correct ICMS tax amounts from normal value.

Belgo notes that the petitioners do not dispute that ICMS taxes statutorily are required to be deducted from normal value to maintain tax exclusivity, rather petitioners claim that Belgo overstated the ICMS tax amount to be deducted. Citing Hot-Rolled Steel Products from Brazil,<sup>8</sup> the respondent states that the Department has already addressed the issue brought by petitioners and rejected the argument that ICMS taxes were overstated. In its decision, the Department stated,

The requirement that the home market consumption taxes in question be ‘added to or included in the price’ of the foreign like product is intended to ensure that such taxes actually have been charged and paid on the home market sales used to calculate {normal value} NV, rather than charged on sales of such merchandise in the home market generally. As the SAA states, ‘{i}t would be inappropriate to reduce a foreign price by the amount of the tax, unless a tax liability had actually been incurred on that sale.’<sup>9</sup>

Therefore, under section 773(a)(6)(B)(iii), the respondent contends, it is legally irrelevant if it recovered some or all of the ICMS tax; rather the relevant fact is that Belgo included the ICMS tax amount in the gross unit price charged to the customer. Citing its submitted responses and the Sales Verification Report,<sup>10</sup> Belgo states that it “explained, documented and verified that the gross unit prices reported to the Department are fully inclusive of ICMS tax and that the tax amount is paid.”<sup>11</sup> Furthermore, Belgo cites the Sales Verification Report, which states that “the Department verified Belgo’s reporting of ICMS...taxes during {its} review of the home market

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<sup>6</sup> See Belgo’s rebuttal brief at 1.

<sup>7</sup> Id. at 2.

<sup>8</sup> See Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Flat-Rolled Carbon Quality Steel Products from Brazil, 64 FR 38756 (July 19, 1999) (Hot-Rolled Steel Products from Brazil).

<sup>9</sup> See respondent’s rebuttal brief at 4 (citing Hot-Rolled Steel Products from Brazil at 38766).

<sup>10</sup> See Memorandum from Carol Henniger, Analyst to Susan Kuhbach, Director, re: Verification of the Sales Response of Companhia Siderúrgica Belgo Mineira, Belgo Mineira Participação Indústria e Comércio S.A. and BMP Siderúrgica S.A. in the Antidumping Duty Review of Carbon and Certain Alloy Steel Wire Rod from Brazil (October 1, 2004) (Sales Verification Report).

<sup>11</sup> See respondent’s rebuttal brief at 4.

sales traces..and tied the taxes listed on the nota fiscal to Belgo's SAP accounting records... {and} {n}o discrepancies were found.”<sup>12</sup> Based on the record, Belgo contends that it met the burden of proof required by the appropriate statutes and the Department's practice, and therefore requests that the petitioners' request be denied.

### **Department's Position:**

We agree with Belgo. Section 773(a)(6)(B)(iii) states that normal value shall be reduced by:

the amount of any taxes imposed directly upon the foreign like product or components thereof which have been rebated, or which have not been collected, on the subject merchandise, but only to the extent that such taxes are added to or included in the price of the foreign like product.

The issue of the ICMS tax has been addressed in previous Department decisions and in each case we have found that the ICMS is a VAT and that as such, to the extent the full amount of the ICMS tax is tied to home market sales and included in the gross unit price, it must be deducted in the calculation of normal value. In Hot-Rolled Steel Products from Brazil, the Department determined that to prevent the creation of dumping margins it would treat consumption taxes (including ICMS) in a manner consistent with its longstanding policy (i.e., calculating tax-neutral dumping margins) by deducting the full amount of these taxes from the home market price. The Statement of Administration Action (SAA) further explained that Section 773(a)(6)(B)(iii)'s requirement that the taxes be included in the price of the foreign like product ensures that the tax is tied to the home market sale used to calculate normal value and not any sale of such merchandise in general. See SAA at 827-828.

The petitioners do not dispute the adjustment of normal value for ICMS taxes, but argue that Belgo overstated the amount of ICMS tax paid because the amount which it owed to the Brazilian government was reduced by credits for ICMS which Belgo paid on an imported input. The petitioners misunderstand the nature of a VAT, which is a consumption tax, not a tax on businesses. Businesses are able to recover VAT paid on the materials that they buy to make products sold to end-users. In this way, the total tax levied at each stage in the economic chain of supply is a constant fraction of the value added. In other words, the tax paid by Belgo on its inputs is used as a credit against the tax Belgo collects on its final products because, by paying VAT on its inputs, Belgo is, in effect, paying a tax it does not owe. The cost of the VAT is borne ultimately by the final customer, with businesses collecting the tax on behalf of the government.

As stated in our Sales Verification Report, we noted no discrepancies in the reporting of the ICMS tax by Belgo and were able to tie the ICMS tax amounts to home market sales' invoices. The petitioners citation of 19 C.F.R. § 351.401(b)(1) only strengthens Belgo's argument because Belgo did provide the Department with all of the relevant information on the amount for the ICMS tax adjustment. Therefore, as Belgo has met the regulatory standards set by the

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<sup>12</sup> See respondent's rebuttal brief at 4 from Sales Verification Report at 19.

Department and provided sales-specific information on the ICMS collected, consistent with previous Brazilian cases, we have continued to deduct the full amount of the ICMS tax in the calculation of normal value.

## **Comment 2: U.S. Price Adjustment for Duty Drawback**

The petitioners request that the Department deny Belgo an upward adjustment to U.S price for duty drawback. Citing Belgo's Section C Questionnaire Response at C-45 and C-46, the petitioners state that Belgo claims it is exempt from the payment of import duties, imposto sobre produtos industrializados (IPI), ICMS, and the Merchant Navy Tax (AFRMM) on its imports of a product used in the steel wire rod process.<sup>13</sup> Citing Silicon Metal from Brazil,<sup>14</sup> the petitioners maintain "the Department has repeatedly found that the ICMS and IPI taxes are not import duties and are not subject to a claim for a duty drawback."<sup>15</sup> The petitioners acknowledge that Belgo has not requested duty drawback related to ICMS and IPI,<sup>16</sup> and that Belgo's only claim with respect to a duty drawback relates to the AFRMM suspended on the imported product used in the steel wire process.<sup>17</sup> Citing Section 772(c)(1)(B) the Act, the petitioners argue that Belgo had not placed any information on the record that shows that the AFRMM is an import duty within the meaning of the Act. Moreover, the petitioners claim the Sales Verification Report indicates that the Department verified that the AFRMM is not an import tax within the Act because it states "the AFRMM is a merchant navy tax for long-haul navigation."<sup>18</sup>

Noting that it has only requested duty drawback for the AFRMM tax and not ICMS and IPI taxes, Belgo maintains that the petitioners' reference to Silicon Metal from Brazil is irrelevant. Belgo argues that it is entitled to the duty drawback adjustment to export price because it has met the Department's practice of determining a duty drawback based on two factors: "{f}irst, the import duty and the rebate must be directly linked to, and dependent on, one another {and} {s}econd, the company must demonstrate that there were sufficient imports of the imported material to account for the duty drawback received for the export of the manufactured product."<sup>19</sup> Belgo

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<sup>13</sup> See petitioners' case brief at 4.

<sup>14</sup> See Final Results of Antidumping Duty Administrative Review: Silicon Metal from Brazil, 67 FR 6488 (February 12, 2002) and accompanying Issues and Decision Memorandum at Comment 8.

<sup>15</sup> See petitioners' case brief at 4.

<sup>16</sup> Id. at 3-4.

<sup>17</sup> See Belgo's Section C Questionnaire Response at C-46.

<sup>18</sup> See petitioners' case brief at 4 from Sales Verification Report at 31.

<sup>19</sup> See respondent's rebuttal brief at 5, citing U.S. Department of Commerce Antidumping Manual at Ch. 7, page 14 and Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Preliminary Results of Antidumping Duty Administrative Review and Antidumping Duty New Shipper Review, 69 FR 54101 (September 4, 2004).

argues that it has met both prongs of this test and provided the Department with the necessary information and documentation on its duty drawback adjustment for the AFRMM tax.<sup>20</sup> Furthermore, Belgo notes that the Department examined its methodology for calculating duty drawback and “noted no discrepancies.”<sup>21</sup>

Belgo states that the “{p}etitioners do not challenge whether Belgo actually met the Department’s two-pronged test for duty drawback adjustment,” but argue that the AFRMM tax does not qualify as an import duty within the meaning of the statute. Citing Stainless Steel Sheet and Strip in Coils from Mexico,<sup>22</sup> Belgo argues that the respondent in that case also claimed a duty drawback for the customs processing fee assessed on the importation of raw materials only on home market sales under Section 772(c)(1)(b). As in this proceeding, the petitioner in that case challenged the duty drawback claim and the Department ruled, “{t}hat statute refers to the customs processing fee at issue here as a ‘general importation tax.’ As an ‘importation tax’ it is an import duty within the meaning of section 772(c)(1)(b).”<sup>23</sup> Belgo further argues that the Department examined the nature and application of the AFRMM tax and even reviewed a copy of the AFRMM statute at verification,<sup>24</sup> which showed that the tax is levied at a rate of 25 percent for long-haul navigation and includes any type of cargo freight associated with waterway transportation that is unloaded in a Brazilian port. Therefore, Belgo maintains, the AFRMM is clearly an import tax within the meaning of the statute.

#### **Department’s Position:**

We agree with Belgo. Section 772(c)(1)(B) states that the price used to establish export price and constructed export price shall be increased by:

the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the subject merchandise to the United States...

To support its duty drawback claim, Belgo provided the Department with a copy of the relevant section of Brazilian law for the AFRMM tax. The AFRMM tax is levied on merchandise unloaded at Brazilian ports, and it is rebated by reason of the export of the subject merchandise to the United States. Therefore, the tax is paid only on merchandise which is subsequently consumed in Brazil.

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<sup>20</sup> See Belgo’s Section C Questionnaire Response at C-45, C-46 and Attachment C-34.

<sup>21</sup> See Sales Verification Report at 32.

<sup>22</sup> See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from Mexico, 64 FR 30790 (June 8, 1999).

<sup>23</sup> See respondent’s rebuttal brief at 7 from Stainless Steel Sheet and Strip in Coils from Mexico at 30813.

<sup>24</sup> See Sales Verification report at EE and Exhibit 20.

As Belgo explained during the review, it must apply for a duty drawback and is required to account in detail for the raw materials imported, show a direct link of the imported material to the merchandise exported and volumes of the imported material with the production of the merchandise. At verification, “{w}e reviewed Belgo’s process for requesting and obtaining duty drawback and tied its calculation worksheet to its request for a duty drawback license, entered in the Brazilian government’s SISCOMEX system, the Customs import statement, duty drawback license, notification of suspension to the Merchant Navy department, and the liquidation of the duty drawback through SISCOMEX.”<sup>25</sup> Therefore, Belgo clearly has passed the two-pronged test used to establish whether a duty drawback adjustment is warranted.

In Stainless Steel Sheet and Strip Coils from Mexico, the Department agreed to allow a duty drawback adjustment for certain customs processing fees which were refunded upon export of the finished goods.<sup>26</sup> Because of how it works, we have determined that the AFRMM tax is an “importation tax” like the processing fee examined in Stainless Steel Sheet and Strip in Coils from Mexico. Although the Brazilian statute does not specifically refer to the tax as an import tax, we note that it is levied on imports and refunded upon export. Therefore, we find that the AFRMM tax meets the definition of an import duty within the meaning of Act, and have continued make an adjustment for duty drawback in these final results.

### **Comment 3: Adjustment for Commissions**

Belgo argues that the Department has mis-characterized certain payments as “commissions” and deducted the per unit amounts in its calculation of U.S. price. For the final results, Belgo requests that the Department not deduct these amounts from U.S. gross unit price as the payments in question are not “commissions” and, therefore, it is contrary to the Department’s practice to make adjustments for the stated amounts.

### **Department’s Position:**

We continued to add the commission paid by the affiliate as reported to normal value when comparing export price. As this issue deals with proprietary information, please see the Analysis Memorandum<sup>27</sup> for a full discussion.

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<sup>25</sup> Id. at 31.

<sup>26</sup> See Stainless Steel Sheet and Strip in Coils from Mexico at 30813.

<sup>27</sup> See Memorandum from Constance Handley, Re: Analysis Memorandum for Belgo (May 9, 2005) (Analysis Memorandum).

#### **Comment 4: Affiliated Parties**

Belgo and Bekaert filed separate case briefs on the Department's decision to declare Belgo affiliated with Bekaert. Both parties have requested that the Department reconsider its affiliation finding for the final results. Additionally, Bekaert states that if the Department finds no affiliation between Belgo and Bekaert, then it should use export price in its calculations, rather than constructed export price.

Belgo and Bekaert both argue that the Department did not meet the criteria to establish affiliation under section 771(33)(F) of the Act, which defines affiliated parties as:

Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.

Belgo and Bekaert contend that the Department based this decision on the existence of joint ventures between Belgo and Bekaert U.S.'s parent company N.V. Bekaert. However, Belgo and Bekaert contend that ownership in joint ventures does not lead the Department to assume that the issue of "control" has been resolved. Belgo and Bekaert argue that, in its Affiliation Memo,<sup>28</sup> the Department failed to prove that either Belgo or Bekaert N.V. exerts any "control" over the other, or jointly exert control over a third party. Further, Belgo and Bekaert argue that the Department failed to establish a connection between any of the entities, in terms of wire rod operations or production, and transactions between Belgo and Bekaert U.S.<sup>29</sup> Moreover, citing Electrolytic Manganese Dioxide from Japan,<sup>30</sup> Belgo asserts that even if the Department is able to potentially establish "control," the Department must also show that the control relationship also has the "potential to impact decisions concerning the pricing, or cost of the subject merchandise or foreign like product."<sup>31</sup> Belgo argues that the evidence in the Affiliation Memo does not demonstrate this "potential" and actually proves that Belgo and Bekaert N.V. are not capable of having such an impact.<sup>32</sup>

Belgo and Bekaert also argue that even if the Department is able to establish affiliation between Belgo and N.V. Bekaert, this affiliation does not extend to Bekaert's subsidiary, Bekaert U.S.

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<sup>28</sup> See Memorandum from Carol Henninger, International Trade Compliance Trade Analyst to Susan Kuhbach, Director, Office 1, Re: Affiliation (July 13, 2004) (Affiliation Memo).

<sup>29</sup> See Belgo's case brief at 32 - 33 and Bekaert's case brief at 27.

<sup>30</sup> See Electrolytic Manganese Dioxide from Japan: Preliminary Results of Antidumping duty Administrative Review, 65 FR 26570 (May 8, 2000).

<sup>31</sup> See Belgo's case brief at 33..

<sup>32</sup> Id. at 34.



Citing Steel Flat Products from Korea,<sup>33</sup> Belgo and Bekaert assert that the Department determined that affiliation may be found between two parties under Section 771(33)(F), but this affiliation cannot be simply extended to a joint venture owner's subsidiary. The Department must also meet a threshold of "control" between the joint venture parties and the subsidiary. As in the above mentioned case, Belgo and Bekaert contend that the Department has not proven that "control" exists between Belgo, Bekaert N.V. and Bekaert U.S. and therefore cannot declare Belgo and Bekaert U.S. to be affiliated. Bekaert also argues that, as Belgo and Bekaert U.S. are not affiliated, the Department must accept sales between Belgo and Bekaert as reliable and use the export price in its calculations rather than constructed export price. According to Bekaert, by using constructed export price, the Department would be violating its obligations under the World Trade Organization (WTO), because it has given no reason why the export price to Bekaert U.S. should be thought to be unreliable.<sup>34</sup>

Belgo and Bekaert finally contend that the Department, not being able to find affiliation between Belgo and Bekaert U.S., have found that N.V. Bekaert and Bekaert U.S. constitute a "single entity" based on evidence submitted on the record. Both parties argue that the Department uses 19 C.F.R. § 351.401(f) to justify its "single entity" determination. Bekaert argues that the statute is generally applied in the context of "affiliated producers," not "a purchaser and its parent's parent."<sup>35</sup> Bekaert asserts, however, that if the Department uses the statute as its guidelines, it still has no basis to consider the companies a single entity. Belgo notes that the Department uses the statute as its criteria for combining N.V. Bekaert and Bekaert U.S. However, Belgo argues that the Department has not "articulated what legal standards may be applied to reach such a conclusion" and that "it is incumbent upon the Department to articulate the legal basis and legal standards under which this new approach to affiliation findings is being applied."<sup>36</sup>

Belgo and Bekaert state that the Department's only precedent in combining N.V. Bekaert and Bekaert U.S. is Salmon from Chile.<sup>37</sup> Belgo and Bekaert argue that Salmon from Chile does not support the Department's position because it found the companies to be affiliated under section 771(33)(E) and therefore the issue was one of equity ownership and not control. Furthermore, Belgo and Bekaert argue that, unlike in Salmon from Chile, the subsidiary, Bekaert U.S., was not formed to hold shares in either company. Finally, Belgo and Bekaert argue that, while N.V. Bekaert may discuss the general framework of the purchasing agreement with Belgo, N.V.

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<sup>33</sup> See Certain Cold-Rolled & Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Administrative Reviews, 62 FR 18404 (April 15, 1997) (Steel Flat Products from Korea).

<sup>34</sup> See Bekaert's case brief at 28.

<sup>35</sup> See Bekaert's case brief at 29.

<sup>36</sup> *Id.* at 36 citing Tung Mung Development Co., Ltd. v. United States, 354 F.3d 1371, 1379 (Fed. Cir. 2004).

<sup>37</sup> See Fresh Atlantic Salmon from Chile: Final Determination of Sales at Less Than Fair Value, 63 FR 31411, 31423 (June 9, 1998) (Salmon from Chile).

Bekaert's role "does not extend to the negotiations between the subsidiary and a respondent."<sup>38</sup> As the more specific terms of sales occur between Belgo and Bekaert U.S.,<sup>39</sup> the situation has no similarities with Salmon from Chile and therefore is inapposite.

The petitioners counter that the Department correctly applied section 771(33) (F) of the Act and argue that Belgo and Bekaert are incorrect in their assertion that there is no "control" between N.V. Bekaert and Belgo. The petitioners state that the Department found Belgo and N.V. Bekaert affiliated under the Act based on their joint ventures. In addition to the joint ventures, the petitioners assert that the Department need not show actual control, but that "one company is in a position to exercise that control if necessary."<sup>40</sup> Citing the Affiliation Memo, the petitioners argue that the Department stated its reasons for control based on the sales relationship among Belgo and Bekaert that would give "rise to the potential to impact pricing, production and cost decisions of the subject merchandise."<sup>41</sup> The petitioners further cite to the Department's Affiliation Memo to establish a rationale for finding a potential for control between Belgo and N.V. Bekaert.<sup>42</sup> The petitioners argue that Belgo and Bekaert have ignored or misunderstood the Department's reasoning with regard to the statute and regulations regarding affiliation. The petitioners state that, as evidenced by Belgo and N.V. Bekaert's mutual control over their joint ventures and the potential for Belgo and N.V. Bekaert to impact decisions concerning the production, pricing or cost of the subject merchandise or foreign like product, the criteria for establishing affiliation have been met. The petitioners finally note that Bekaert's assertion that the Department must use export price due to WTO obligations is unfounded. The petitioners argue that because of the affiliation between Belgo and Bekaert, constructed export price must be used and, therefore, no violation of WTO obligations exists.

Having found Belgo and N.V. Bekaert affiliated, the petitioners agree with the Department's decision to consider N.V. Bekaert and Bekaert U.S. a single entity. Based on information on the record, the petitioners assert that the companies may be considered affiliated under section 773(E) of the Act, although they note that the Department did not apply this statute. The petitioners further cite to the Department's Affiliation Memo to discuss the relationship between N.V. Bekaert and Bekaert U.S. and the Department's rationale, based on information on the record, for concluding the two companies represent a single entity.<sup>43</sup> The petitioners again argue that the Department, despite Belgo and Bekaert comments, provided sufficient information to conclude that Belgo is affiliated to that single entity.

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<sup>38</sup> See Bekaert's case brief at 32.

<sup>39</sup> See Belgo's case brief at 38.

<sup>40</sup> See petitioners' rebuttal brief at 3.

<sup>41</sup> Id. at 3 (citing Affiliation Memo at 5).

<sup>42</sup> Id. at 4 (petitioners cite proprietary information that may not be disclosed in this memo).

<sup>43</sup> Id. at 6 (petitioners cite proprietary information that may not be disclosed in this memo).

The petitioners further argue that Bekaert's assertion that N.V. Bekaert and Bekaert U.S. are not a single entity based on 19 C.F.R. § 351.401(f) is misplaced. The petitioners note that while the "regulation does not directly apply in this situation, by analogy, the existence of indicia establishing the potential for manipulation of prices or production between {the two} would further support the Department's decision to treat those two affiliated entities as a single entity."<sup>44</sup> Therefore the petitioners believe that the above mentioned regulation is relevant to the Department's decision to treat N.V. Bekaert and Bekaert U.S. as a single entity.

Finally, the petitioners counter that Salmon from Chile does establish a precedent in the Department's reasoning for finding affiliation in this case. The petitioners argue that Salmon from Chile states that "when a parent company's control over its subsidiary extends to the negotiations between the subsidiary company and the respondent, the parent and subsidiary may be treated as a single entity."<sup>45</sup> Although the circumstances are not exact, as Belgo and Bekaert claim, the petitioners assert that "the reasons treating the entities as a single unit is identical."<sup>46</sup> Therefore, the petitioners argue that Salmon from Chile is relevant to this situation and provides the Department with the basis for concluding Bekaert N.V. and Bekaert U.S. should be treated as a single entity which is affiliated with Belgo.

#### **Department's Position:**

We agree with the petitioner. As we stated in the Affiliation Memo, Belgo and N.V. Bekaert are affiliated under section 771(33)(F) of the Act; they exercise common control over their joint ventures. The statute clearly states that if two companies directly or indirectly control any person, they *shall be* considered "affiliated" or "affiliated persons." (Emphasis added). In Mitsubishi Heavy Industries, Ltd. v. United States,<sup>47</sup> the court held that "the statutory definition of affiliated parties at 19 U.S.C. § 1677(33)(F) {section 771(33)(F) of the Act} does not require that MHI and Trading Company exercise control over each other. The statute requires only that 'two or more persons,' control a third person." Based on information provided on Belgo and N.V. Bekaert's joint ventures, in the Analysis Memo, the statutory and judicial requirements for establishing an affiliation between the two parties have been met. Our complete analysis of Belgo and N.V. Bekaert's relationship may be found in our Analysis Memo, as it involves a discussion of proprietary information.

With regard to our treatment of N.V. Bekaert and Bekaert U.S. based on determinations of affiliation and the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise, our analysis involves not only the equity ownership of Bekaert U.S., but also the unique relationship between N.V. Bekaert and Bekaert U.S., and Belgo in the sales

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<sup>44</sup> Id. at 8.

<sup>45</sup> Id. at 9.

<sup>46</sup> Id.

<sup>47</sup> See Mitsubishi Heavy Industries, Ltd. v. United States, 15 F. Supp. 2d 807, 832 (CIT 1998).

process. As the Department's rationale involves proprietary information, please see the Analysis Memo for a detailed explanation of this relationship. Based on the information contained in the Analysis Memo, we continue to conclude that it is appropriate to treat N.V. Bekaert and Bekaert U.S. as a single entity.

While based on the unusual facts of this case, our finding that N.V. Bekaert and Bekaert U.S. are acting as a single entity which is affiliated with the respondent is consistent with Salmon from Chile. In that case, we also found the parent company's control over its subsidiary to extend into the distribution agreement between the subsidiary and respondent. Belgo and Bekaert argue that Salmon from Chile has no bearing on this review because the affiliation between the respondent and its U.S. customer's parent involved equity ownership. We disagree. Once affiliation is established between a respondent and the parent company of its U.S. customer, it is necessary to examine the relationship between all three entities, including their involvement in the sales process. That the affiliation in this case is based on joint ventures rather than equity ownership, does not negate the similarity of the cases. As in Salmon from Chile, our analysis revolves around the issues of how the purchasing, pricing and sales negotiations are conducted by the entities involved and their direct relationship with each other. As further outlined in our Analysis Memo, the rationale for finding that N.V. Bekaert and Bekaert U.S. should be treated as a single entity relies on a sound foundation.<sup>48</sup> Facts and information provided by the respondent on the record indicate the roles of N.V. Bekaert and Bekaert U.S. in the sales process that have the potential to impact decisions concerning the production, pricing or cost of the subject merchandise or foreign like product.<sup>49</sup>

Belgo and Bekaert argue that the Department cannot make a determination without citing to a statute or regulation and that the collapsing regulation, 19 C.F.R. § 351.401(f), does not cover this particular circumstance. While we agree that this regulation is not directly applicable, as it pertains to collapsing producers of subject merchandise, the rationale for avoiding transactions between parties where the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise has been demonstrated is fully consistent with the Department's regulations and various provisions of the statute. See, e.g., sections 771(33) and 772(a)-(b) of the Act.

Based on the evidence above and in the Analysis Memo, Bekaert N.V. and Bekaert U.S. function as a single entity in their transactions with Belgo, giving rise to significant potential for manipulation of price between Belgo's sales to Bekaert U.S. and other worldwide Bekaert entities, including the joint ventures companies. Therefore, as in the Preliminary Results, we find that Bekaert N.V. and Bekaert U.S. are acting as a single corporate entity which is affiliated with Belgo, and have continued to treat sales from Belgo to Bekaert as sales to an affiliated party.

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<sup>48</sup> See 19 C.F.R. § 351.102.

<sup>49</sup> We note that the facts of this case, which involve proprietary information, go beyond the customer simply being the subsidiary company of a respondent's affiliate. Therefore, we do not suggest that this analysis would be appropriate in all cases involving a respondent's sales to an affiliate's affiliate.

## **Comment 5: Special Rule for Products Further Manufactured in the United States**

Belgo, joined by Bekaert, has stated that if the Department does find Belgo and Bekaert to be affiliated for the final results, the Department should apply the special rule set forth in section 772(e) of the Act and 19 CFR § 351.402(c)(2) to Bekaert U.S.'s sales of further-manufactured products.

Belgo and Bekaert argue that they met the requirements for application of the special rule as well as provided the Department with the required documentation to apply the special rule. They assert that the Department deviated from its normal practice in declining to apply the special rule.

Specifically, on July 26, 2004, at the request of Belgo, Bekaert provided the Department with the necessary data to apply the special rule.<sup>50</sup> Bekaert stated that although the information it submitted originally contained some errors, it provided corrected data on August 12, 2004.<sup>51</sup> Both parties argue that in the July 26, 2004 submission Bekaert explained in detail the justification for application of the special rule and that it met all of the criteria.<sup>52</sup> However, Belgo and Bekaert contend that the application of the special rule was unfairly denied by the Department based on the 65 percent threshold for value-added to subject merchandise.

In analyzing the data, the Department sent a request to Bekaert U.S. to provide a further breakdown of value-added merchandise into subgroups.<sup>53</sup> Belgo and Bekaert argue that this request was made only as a result of petitioners' comments, because the petitioners questioned the accuracy of the data as a whole in reaching the 65 percent threshold. Belgo and Bekaert contend that the petitioners misrepresented the information provided to the Department, and that the Department should not have requested a breakdown of the submitted data.<sup>54</sup> In addition, Belgo and Bekaert both argue that the Department, citing The Preamble,<sup>55</sup> misinterpreted its meaning. They argue that the special rule sets forth that averages of value-added merchandise are to be used, not a product-by-product average. Belgo states that the reference in The Preamble "is clearly to the 'subject merchandise' that was sold with value added...not the downstream 'value

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<sup>50</sup> See Letter from Squire Sanders to the Department, Re: Administrative Review regarding Carbon and Certain Alloy Steel Wire Rod (July 26, 2004).

<sup>51</sup> See Letter from Squire Sanders to the Department, Re: Administrative Review regarding Carbon and Certain Alloy Steel Wire Rod (August 12, 2004).

<sup>52</sup> See Belgo's case brief at 41 - 43 and Bekaert's case brief at 33-34.

<sup>53</sup> See letter from Constance Handley, Program Manager to Ritchie Thomas, Esq., Squire Sanders & Dempsey, Re: Antidumping Duty Review of Carbon and Certain Alloy Steel Wire Rod from Brazil (August 9, 2004).

<sup>54</sup> See Bekaert's case brief at 35.

<sup>55</sup> See Antidumping Duties; Countervailing Duties, 62 FR 27296, 27352-3 (May 17, 1997) (The Preamble).

added product’ that was the focus of the Department’s information request.”<sup>56</sup>

Bekaert further argues that application of the special rule to averages should not be dismissed lightly by the Department. Citing Antifriction Bearings, Bekaert states that the petitioner in that review argued that the respondent did not meet the special rule requirements because not all of the facilities met the 65 percent threshold. In response, the Department stated, “we calculate the average value added in the United States on the basis of the respondent as a whole, not on individual facilities or models.”<sup>57</sup> Belgo also points to the Wire Rod Investigation.<sup>58</sup> In the Wire Rod Investigation, the Department applied the special rule to value-added sales of Belgo’s affiliate. The value-added merchandise, as with Bekaert U.S., involved a number of value-added products and the Department was able to make its ruling based on the averages submitted. Belgo contends that neither the Department nor petitioners can provide a precedent in which this product-by-product information was requested. Belgo finally notes that the Department has never provided an explanation as to how this additional breakdown will establish a more accurate estimate in application of the special rule. Therefore, Belgo and Bekaert argue that in the final results, the Department should use the information submitted by Bekaert U.S. and apply the special rule.

As a result of Bekaert’s decision not to supply the requested information, the Department preliminarily determined to invoke adverse facts available in the calculation of Bekaert U.S. sales. Citing section 776(a)(2)(A) of the Act, Belgo states that the Department may only apply adverse facts available when a party “has failed to cooperate by not acting to the best of its ability to comply with a request for information.”<sup>59</sup> However, Belgo argues that no evidence exists that Belgo has failed to cooperate to the best of its ability with the Department’s request for information.

Belgo asserts that the Department’s rationale for applying adverse facts available is Bekaert’s refusal to provide the Department with the additional value-added information in regards to the special rule. Belgo argues that as it is not affiliated with Bekaert U.S., it did everything in its power to have Bekaert U.S. submit the requested information to the Department. Belgo notes that Bekaert U.S. did submit data to support application of the special rule and that Belgo sent repeated requests to Bekaert’s counsel requesting that the information be provided to the Department. Therefore, Belgo states that “it did literally everything in its power to provide the

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<sup>56</sup> See Belgo’s case brief at 48.

<sup>57</sup> See Bekaert’s case brief at 36. See, also, Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan Sweden, and the United Kingdom: Final Results of the Antidumping Duty Administrative Review, 66 FR 36551 (July 12, 1999) and Issues and Decision Memorandum at Comment 27.

<sup>58</sup> See Carbon and Certain Alloy Steel from Brazil: Preliminary Determination of Sales at Less Than Fair Value, 67 FR 18165, 18168 (April 15, 2002).

<sup>59</sup> See Belgo’s case brief at 51 (citing section 776(a)(2)(A) of the Act).

data requested by the Department.”<sup>60</sup>

Finally, Belgo argues that the court has addressed the application of adverse facts available to a respondent who had no control of the information in question or was unable to provide it. Citing Usinor Sacilor v. United States, 907 F. Supp. 426 (1995) (Usinor Sacilor), the Court of International Trade (CIT) overruled the Department’s use of adverse facts available for Usinor due to its inability to obtain information for downstream sales from entities in which it held a minority interest. Belgo states “the respondent in Usinor had a direct equity stake in the entities at issue, yet the CIT required the evidence of control and ability to report the information, notwithstanding levels of affiliation far beyond what has been alleged in this case.”<sup>61</sup> Belgo further states that other judicial rulings have also found that the Department may not use adverse facts available where a respondent cooperates with the Department, yet is unable to obtain data for reasons outside of its control.<sup>62</sup> Based on Belgo’s cooperation and judicial precedent, Belgo asserts that the Department has no basis for applying adverse facts available and should not use it for the final results.

The petitioners counter that as Belgo and Bekaert U.S. were found to be affiliated, Belgo was required by statute to report U.S. sales to the first unaffiliated customer and to respond to the Section E questionnaire on U.S. further manufacturing expenses. Belgo, instead, requested that the Department apply the special rule. The petitioners state that for the Department to apply the special rule, Belgo had to meet the provisions in section 772(e) of the Act and 19 C.F.R. § 351.402(c)(2). In Belgo’s July 26, 2004, submission, the petitioners note that the Department found disparities in the information provided and requested that Bekaert U.S. also respond to three additional supplemental questions.<sup>63</sup> In response to the Department’s request, Bekaert U.S. refused to provide the requested information. Therefore, the Department denied Belgo’s request to apply the special rule based on insufficient information and again requested that Belgo submit its U.S. downstream sales and U.S. manufacturing costs.

The petitioners agree with Belgo and Bekaert that the Department did not follow its normal procedure in applying the special rule. However, the petitioners note that the Department does have the authority to use subgroupings of subject merchandise when determining if the 65 percent threshold has been met. The petitioners argue that the information submitted by Bekaert clearly showed that there were disparities among the value-added products that warranted the

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<sup>60</sup> See Belgo case brief at 51.

<sup>61</sup> Id. at 52 - 53.

<sup>62</sup> See, e.g., Helmerich Payne, Inc. v. United States, 24 F. Supp. 2d 304, 309 (1998)(Helmerich Payne), Al Tech Speciality Steel Corp. v. United States, 947 F. Supp. 510, 523 (1996)(Al Tech Speciality), and Nippon Steel Corp. v. United States, 337 F. 3d. 1373 (2003)(Nippon).

<sup>63</sup> Id. at 13 - 14.

Department's request for further information.<sup>64</sup> The petitioners further argue that Bekaert's refusal to provide the Department with the appropriate information based on its "sensitive" nature left the Department with no option but to deny the special rule request. In addition, Belgo still had not provided its U.S. downstream sales and further manufacturing costs, as the Department initially requested.

The petitioners assert that Belgo has not provided any evidence in its case brief to support the special rule. The petitioners argue that Bekaert's claims that 19 C.F.R. § 351.402(c)(2) was developed precisely to make the Department's detailed request unnecessary is unfounded. The petitioners note that the statute allows the Department broad discretion in applying the special rule and it had a reasonable basis to request further information based on Bekaert's submitted data. The petitioners finally add that the Department's discussion of the regulation explains in detail the discretion allowed to the Department in applying the special rule and note that even the 65 percent threshold may be increased by the Department.<sup>65</sup>

The petitioners argue that the judicial and Department precedents cited by Belgo and Bekaert are not similar to the particular issues in this review. First, the petitioners note that in Antifriction Bearings, the Department declined to calculate averages on individual facilities or models, while in this review the Department was attempting to analyze data on a broad range of subgroups. The petitioners also contend that Belgo's claim to have had a similar situation in the Wire Rod Investigation is unfounded because the issues involved with that special rule were not developed on the record as the investigation was ultimately determined on adverse facts available.

The petitioners also contend that Belgo's arguments are misplaced with regard to the Department's use of adverse facts available for Bekaert U.S. sales. The petitioners agree with the Department's decision to apply adverse facts available because of Bekaert U.S.'s refusal to provide the requested information. The petitioners argue that the judicial rulings cited by Belgo do not apply to this review because the Department has used adverse facts available in numerous cases and have been upheld in court cases. Citing Kawasaki Steel Corp. v. United States,<sup>66</sup> the petitioners state that the CIT upheld the Department's use of adverse facts available when the U.S. affiliate of the foreign producer showed an "unwillingness" rather than an "inability" to provide the requested information to the Department.<sup>67</sup> The petitioners also note that the U.S. affiliate in the Kawasaki case was a petitioner in the case. As in Kawasaki, the petitioners argue there is no evidence that Belgo "could not take additional steps to obtain the necessary information."<sup>68</sup> Based on the record, Belgo and Bekaert's actions, and the statutes and

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<sup>64</sup> Id. at 16 (petitioners cite proprietary information that may not be disclosed in this memo).

<sup>65</sup> Id. at 20.

<sup>66</sup> See Kawasaki Steel Corp. v. United States, 110 F. Supp. 2d 1029, 1036 (2000) (Kawasaki).

<sup>67</sup> See petitioners' rebuttal brief at 22 (citing Kawasaki).

<sup>68</sup> Id. at 22.



regulations regarding use of adverse facts available, the petitioners see no reason for the Department not to use adverse facts available for Bekaert sales in the final results if the Department finds Belgo and Bekaert U.S. affiliated.

### **Department's Position:**

Having found Belgo affiliated with Bekaert U.S., we requested that Belgo provide a revised Section C Questionnaire Response and that it submit a response to Section E of the questionnaire.<sup>69</sup> On July 26, 2004, we received a letter from Belgo requesting that the Department apply the special rule to Bekaert U.S.'s sales.<sup>70</sup> After considering the data submitted by Bekaert, we requested additional information because of potentially significant price disparities among the value-added products which therefore might have an undue influence in the application of the special rule. In response to our request, Bekaert initially asked the Department for an extension so that it could compile the requested data.<sup>71</sup> We granted an additional week to Bekaert U.S. for submitting the requested data. In Bekaert's August 18, 2004 submission, it stated that "{i}f the request is not withdrawn, {Bekaert} would regretfully have to decline to provide the requested breakdown."<sup>72</sup> In light of Bekaert U.S.'s refusal to provide information requested by the Department, the Department denied Belgo's request to apply special rule request pursuant to section 772(e) of the Act and again requested that Belgo respond to section E of the questionnaire.<sup>73</sup>

In both of their case briefs, Belgo and Bekaert continue to assert that the Department did not fairly apply the special rule. However, their citations to past cases are unavailing. In Antifriction Bearings, the issue was applying the 65 percent threshold to the company as a whole, not determining if each individual facility or factory met the threshold. In this review, the Department made a request to Belgo and Bekaert based on the submitted information, so that a determination on the special rule could be made. Our request did not involve a specific separation based on a facility or factory, but a broad breakdown of further-manufactured

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<sup>69</sup> See Affiliation Memo at 7 and Letter from Constance Handley, Program Manager to Hogan & Hartson, Re: Antidumping Duty review of Carbon and Certain Alloy Steel Wire Rod from Brazil (July 13, 2004).

<sup>70</sup> See Letter from Hogan & Hartson to the Department, Re: Carbon and Certain Alloy Steel Wire Rod from Brazil: Application of "Special Rule" to Sales by {Bekaert U.S.} (July 26, 2004).

<sup>71</sup> See Letter from Squire Sanders & Dempsey to the Department, Re: Administrative Review regarding Carbon and Certain Alloy Steel Wire Rod (August 12, 2004) at 3.

<sup>72</sup> See Letter from Squire Sanders & Dempsey to the Department, Re: Administrative Review regarding Carbon and Certain Alloy Steel Wire Rod (August 18, 2004) at 2.

<sup>73</sup> See Letter from Jesse Cortes, International Trade Compliance Analyst through Constance Handley, Program Manager to Susan Kuhbach, Director, Re: Special Rule to Exempt Reporting of Sales of Further Manufactured Products (September 9, 2004) and Letter from Constance Handley, Program Manager to Hogan & Hartson and Squire Sanders & Dempsey, Re: First Antidumping Duty Review of Carbon and Certain Alloy Steel Wire rod from Brazil: Special Rule Decision Memorandum (September 10, 2004).

products, as contemplated in Antidumping Duty; Countervailing Duty, Proposed Regulations, 61 FR 7308, 7331 (Feb. 27, 1996) which states that where there are significant disparities in price between subject merchandise or the value added products, the Department retains the discretion to base the averages on smaller groupings of products. In addition, Belgo's assertion that we were faced with a similar situation in the Wire Rod Investigation is unfounded. In the Wire Rod Investigation, we were forced to use adverse facts available for the final determination because Belgo withdrew all of its proprietary information from the record. Therefore, there is no record evidence of what facts the Department was faced with in the Wire Rod Investigation, nor were any facts regarding the application of the special rule considered for the final determination.

As we have previously stated, Belgo failed to submit a revised Section C or completed Section E to the Department. Under section 776(a), the Department may use facts available when the necessary information is not on the record. In this proceeding, Bekaert was able to have its affiliate provide the necessary information to the Department when it sought application of the special rule. However, following the Department's request for further information, both Bekaert and its affiliate decided to refuse to provide the Department with the necessary information to either make a further decision on application of the special rule or be able to analyze the further manufactured sales of Bekaert U.S. to the first unaffiliated customer. Because the information on the first sale to an unaffiliated party is not on the record, we determined that facts available must be applied to sales made through Bekaert.

After determining that we must apply facts available, we looked at the facts on the record to determine if an adverse inference is warranted. Under section 776(b) of the Act, the Department may apply adverse facts available when an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Because Belgo and its affiliate did not provide the necessary information for the Department to consider and possibly grant their request that the special rule be applied, it became incumbent upon them to respond to Sections C and E, without which our analysis of the sales to Bekaert could not be conducted. As we have previously stated in our decision, after denying the request to apply the special rule, we again requested that Belgo provide the Department with a revised section C and section E questionnaire response. Belgo failed to cooperate to the best of its ability when it failed to provide the Department with any of the requested information. Therefore, due to Belgo's failure to cooperate by not acting to the best of its ability to comply, we applied adverse facts available to these limited sales.

Belgo argued that the Department may not apply adverse facts available in this circumstance and cites to judicial precedents. However, Belgo's citations of previous court cases are not applicable to this situation. Usinor Sacilor and Al Tech Speciality both involved respondents that fully cooperated with the Department, but encountered difficulties in reporting a minority of sales due to extenuating circumstances. Helmerich & Payne is applicable, but supports the Department's position that it may use adverse facts available if it does not receive information requested in regards to a questionnaire. As noted above, we asked numerous times for Belgo to respond to the Department's section E questionnaire, but never received the response or

explanation from Belgo as to why it could not provide a revised Section C or completed Section E Questionnaire Response.

In addition, we believe the facts of the Kawasaki case are more analogous to this review than those in the Nippon case. The first test in Nippon is whether a party should have known to maintain the necessary records. Kawasaki dealt directly with a U.S. affiliate which was unwilling to provide the Department with necessary information, whereas in Nippon, the necessary information was filed in an untimely fashion. We have no reason to believe that the necessary records were not maintained. With regard to the second prong of Nippon, Belgo did not promptly produce the information requested. In fact, its affiliate wrote a letter to the Department specifically refusing to provide the information. In this case, Bekaert had the information needed by the Department, but refused to provide it. The information in question, the downstream sales to the first unaffiliated U.S. customer, is key to the Department's analysis.

Since the Preliminary Results, the facts concerning the application of adverse facts available have not changed. We continue to hold that Belgo and Bekaert U.S. are affiliated. Following our decision on the special rule, we requested that Belgo submit a response to Section E of the questionnaire. Belgo asked that the Department consider its request to apply the special rule to Bekaert U.S.'s sales and was denied based on Bekaert U.S.'s refusal to provide necessary data to complete the special rule analysis. Following our denial of the special rule application, Belgo still did not submit section E of the questionnaire. As neither Belgo nor Bekaert U.S. responded to our request for information, the Department's only option was to use adverse facts available. Therefore, we have continued to apply an adverse facts available rate equal to the highest non-aberrational margin calculated for the final results only on Bekaert U.S.'s, Belgo's affiliate, further manufactured sales to unaffiliated U.S. customers.

#### **Comment 6: Final Scope Ruling**

On October 27, 2004, the Department issued a preliminary ruling on the scope inquiry of grade 1080 tire cord quality wire rod and tire bead quality wire (1080 TCBQWR wire rod).<sup>74</sup> The Department preliminarily ruled that the language, as it relates to the 1080 TCBQWR exclusion "having no inclusion greater than 20 microns" was not ambiguous. Thus, the "plain" language of the scope indicated, as petitioners intended, no inclusions greater than 20 microns in any direction. Belgo and Bekaert both submitted arguments in their case briefs requesting that the Department reconsider its preliminary ruling and the petitioners submitted a rebuttal brief urging the Department to uphold its ruling for the final. We continued to uphold our preliminary ruling. For the full discussion of this issue, please see Memorandum from David Neubacher, Analyst to Barbara E. Tillman, Acting Deputy Assistant Secretary, Re: Carbon and Certain Alloy Steel Wire

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<sup>74</sup> See Memorandum from Jesse Cortes, Analyst to Jeffrey May, Deputy Assistant Secretary for Import Administration, Re: Carbon and Certain Alloy Steel Wire Rod from Brazil: Preliminary Scope Ruling on Grade 1080 Tire Cord Quality Wire Rod and Tire Bead Quality Wire Rod (October 27, 2004) (Preliminary Scope Ruling).

Rod from Brazil: Final Scope Ruling on Grade 1080 Tire Cord Quality Wire Rod and Tire Bead Quality Wire Rod (May 9, 2005), which is on file in the Central Records Unit in Room B-099 of the main Commerce building.

Based on our analysis of the comments received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final results in the *Federal Register*.

Agree\_\_\_\_\_

Disagree\_\_\_\_\_

\_\_\_\_\_  
Joseph A. Spetrini  
Acting Assistant Secretary  
for Import Administration

\_\_\_\_\_  
Date